IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.A. No.1 of 2006
Date of decision: 02.11.2006

Brij Mohan Bansal. Sarsa.

---Appellant

Vs.

Income Tax Officer, Ward-2, Sarsa.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. K. L. Goyal, Advocate
for the appellant.

Mr. Yogesh Putney, Advocate
for the respondent.

ORDER:

This appeal has been preferred by the assessee against the order dated 30.01.2004 of Income Tax Appellate Tribunal, Chandigarh Bench-A, Chandigarh in I.T.A. No.813/Chandi/2004 in respect of the assessment year 2000-01 proposing following substantial questions of law:-

"(i) Whether on the facts and in the circumstances of the case, the Ld. ITAT is justified in upholding the order of Assessing Officer as well as the CIT, rejecting the books of accounts and applying section 145(3) of the Act ibid, to determine the total income of the assessee?

(ii) Whether the estimate of the profit despite the assessee maintaining regular accounts for business duly audited by Chartered Accountant was justified?

(iii) Whether on the facts and in the circumstances of the case, the Ld. ITAT is justified in upholding the order of CIT applying a GP Rate of 5.5% on the sales made to Govt./Semi-Govt. agencies, against the returned gross

profit rate of 3% and without referring any comparative case showing such GP Rate of 5.5% or any basis.

(iv) Whether there is any material on record, on the basis of which the Ld. ITAT has upheld the disallowance of Rs.42,254/- in Expenses Account?"

Return of the assessee was processed under Section 143(1) of the Income-tax Act, 1961 (for short, "the Act") and questionnaires were served on the assessee. Business of the assessee was purchase of timber and sale thereof in the form of batons, sleepers and crates etc. The assessee was also supplying crates to the Government organizations. GP rate declared by the assessee was 3.83% as against 8.59% for the previous year. The Assessing Officer rejected the books of account and made best judgment assessment by applying GP rate of 10% on sales of Rs. 50,74,876/- and GP rate of 6.5% on sale of wooden crates worth Rs. 2,89,92,375/- for the following reasons:-

(i) In the previous assessment year, GP rate was 8.59% and explanation that in the current year sales were made to the Government agencies did not justify lower GP rate.

(ii) No inventory of closing of stock was prepared and no stock register was kept; purchases were without bills; no payment slips were produced; wood was purchased in quintals while sale was made by measurement.

(iii) The sale of crates was of Rs.2.89 crores as against sale of timber of Rs.50.74 lacs.

(iv) Comparable sales were of GP rate on 13.15%.

The Assessing Officer disallowed telephone expenses to the extent of Rs.5,000/- for personal use in the business record;; sum of Rs.15,000/- out of claim towards labour charges; Rs.8254/- (25%) out of car expenses and Rs. 4,000/- out of claim for miscellaneous expenses since the assessee did not have the record.

On appeal, the CIT(A) partly accepted the claim of the assessee by reducing the GP rate from 10% to 8.53% for trading turnover and from 6.5% to 5.5% on sale of wooden crates apart from relief of Rs.5,000/- each in the matter of disallowance of labour charges and diesel expenses. The Tribunal upheld the order of CIT(A) on the grounds:-

(i) Failure of the assessee to maintain record of purchases,

(ii) absence of verifiability of the sale,

(iii) absence of stock register,

(iv) low profit and

(v) low GP rate.

Learned counsel for the assessee submitted that the view taken by the Tribunal was erroneous and substantial questions of law arise from the order of the Tribunal which are required to gone into by this Court.

Learned counsel for the revenue opposed the submissions particularly by pointing out that in the grounds of appeal raised before the Tribunal, rejection of books of account was not challenged; turnover of the assessee had increased compared to the last year; due opportunity had been given to the assessee; there are valid reasons for assessment.

After hearing learned counsel for the parties, we are of the view that no substantial question of law arises on the findings recorded and the order of the Tribunal does not call for any interference. The view taken by the authorities below is a possible view on appreciation of material on record.

We may, however, refer to the judgments relied upon by the learned counsel for the assessee which are as under:-

1. ***St. Teresa's Oil Mills*** ***v.*** ***State of Kerala*** (1970) 76 ITR 365 (Ker).

2. ***Jhandu Mal Tara Chand Rice Mills*** ***v.*** ***Commissioner of Income-Tax, Patiala*** (1969) 73 ITR 192 (Ker).

3. ***Jindal Aluminium Ltd. and another v. Deputy Commissioner of Commercial Taxes*** (1999) 115 STC 253 (Kant).

4. ***Mani & Co. v. Commissioner of Income-Tax*** (1995) 213 ITR 563 (Ker).

5. ***Joseph Thomas & Bros. v. Commissioner of Income-Tax, Kerala*** (1968) 68 ITR 796 (Ker).

6. ***Tara Chand Hari Ram v. Sales Tax Tribunal, Haryana and others*** (1972) 30 STC 343 (P&H).

7. ***Commissioner of Income Tax v. K.Y. Pilliah and sons*** (1967) 63 ITR 411 (SC).

8. ***Polisetti Subbaraidu & Co. v. Commissioner of Income-Tax*** (1968) 69 ITR 738 (AP).

In **St. Teresa's Oil Mills,** it was observed that accounts maintained in the course of business have to be accepted as correct unless the same were unreliable or incomplete. In the present case, the accounts having been found to be incomplete or not maintained, this judgment is not applicable.

In **Jhandu Mal Tara Chand Rice Mills**, it was held that method of accounting adopted by the assessee and accepted by the department for the previous years, income computed on that basis could not be rejected. This proposition is not applicable to the facts of the present case.

In **Jindal Aluminium,** it was held that where no defects were found in the stock registers and no transactions were found outside the books of account, inference of under-valuation of raw materials or of closing stocks was not warranted. This proposition is also not applicable to the facts of the present case.

In **Mani & Co.**, it was observed that estimate of profits could not be upheld when the assessee was maintaining books of accounts and this gave rise to a question of law. The said judgment is also distinguishable as the

same was out of proceedings under Section 256(2) of the Act and in the present case appeal is maintainable on a substantial question of law. Secondly, books of account were not rejected in that case.

In **Joseph Thomas,** it was held that GP rate disclosed by other cases could not be relied upon without furnishing the details to the assessee. The said judgment is also distinguishable as in the present case, GP rate has been estimated on overall view of the matter and after opportunity to the assessee.

In **Tara Chand Hari Ram**, it was held that best judgment assessment could not be arbitrary. This judgment also has no application on the facts of the present case.

In **K.Y. Pilliah**, it was held that where the assessee did not furnish explanation why profit at normal rate was not earned, the estimate gross profit was justified. The said judgment instead of supporting the case of the assessee, goes against him.

In **Polisetti Subbaraidu**, it was held that rejection of books of account was not justified in absence of data connecting comparable business with different method of manufacture adopted by the assessee. The judgment is not applicable to the present situation.

In the preset case, even after the assessment referring to comparable data confronted to the assessee, he did not bring on record any contrary data to substantiate his plea.

In view of above, the appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

November 02, 2006
ashwani

(RAJESH BINDAL)
JUDGE